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SERIES I No. 11

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

*Note: There is one Extraordinary issue to the Official Gazette Series I No. 10 dated 6-6-2002 namely Extraordinary dated 7-6-2002 from pages 231 to 232 regarding Notification from Department of Health.*

### GOVERNMENT OF GOA

Department of Law & Judiciary

Legal Affairs Division

#### Notification

10-3-88/LA (Part)

The Companies (Amendment) Act, 1988 (Central Act 31 of 1988) which was passed by Parliament and assented to by the President of India on 24-5-1988 and published in the Gazette of India, Extraordinary, Part II, Section 1, dated 27-5-1988 is hereby re-published for the general information of the public.

P. V. Kadnekar, Under Secretary (Drafting).

Panaji, 25th November, 1988.

### THE COMPANIES (AMENDMENT) ACT, 1988

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ACT

*further to amend the Companies Act, 1956.*

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Companies (Amendment) Act, 1988.

(2) Section 66 of this Act in so far as it relates to the insertion of new Schedule XIV to the principal Act shall be deemed to have come into force on the 2nd day of April, 1987, and the

remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

2. *Amendment of Section 2.*— In section 2 of the Companies Act, 1956 1 of 1956. (hereinafter referred to as the principal Act), for clause (45), the following clauses shall be substituted, namely:—

“(45) “secretary” means a Company Secretary within the meaning of clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980, and includes 56 of 1980. any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties;

(45A) “secretary in whole-time practice” means a secretary who shall be deemed to be in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980 and who is 56 of 1980. not in full-time employment;”.

3. *Substitution of new section for section 5.*— For section 5 of the principal Act, the following section shall be substituted, namely:—

“5. *Meaning of “officer who is in default”.*— For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression “officer who is in default” means all

the following officers of the company, namely:—

- (a) the managing director or managing directors;
- (b) the whole-time director or whole-time directors;
- (c) the manager;
- (d) the secretary;
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
- (f) any person charged by the Board with the responsibility of complying with that provisions:

Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

4. *Amendment of section 10E.*— In section 10E of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) As soon as may be after the commencement of the Companies (Amendment) Act, 1988, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration.

(1A) The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it by the

Central Government, by notification in the Official Gazette under the provisions of this Act or that other law.";

(b) to sub-section (2), the following proviso shall be added, namely:—

"Provided that the Central Government may, by notification in the Official Gazette, continue the appointment of the chairman or any other member of the Company Law Board functioning as such immediately before the commencement of the Companies (Amendment) Act, 1988 as the chairman or any other member of the Company Law Board, after such commencement for such period not exceeding three years as may be specified in the notification.";

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) the members of the Company Law Board shall possess such qualifications and experience as may be prescribed.";

(d) sub-section (4A) shall be omitted;

(e) in sub-section (4B), for the words, brackets, figure and letter "Without prejudice to the provisions of sub-section (4A), the Board, with the previous approval of the Central Government," the words "The Board" shall be substituted;

(f) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

"(5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law Board shall in the exercise of its powers and the discharge of its functions under this Act or any other law be guided by the principles of natural justice and shall act in its discretion.

(6) Subject to the foregoing provisions of this section, the Company Law Board shall have power to regulate its own procedure."

5. *Insertion of new section 10F.*— In Part IA of the Principal Act, after section 10E, the following section shall be inserted, namely:—

"10F.— *Appeals against the orders of the Company Law Board.*— Any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

6. *Amendment of section 33.*— In section 33 of the principal Act,—

(a) in sub-section (1), for clause (c), the following clause shall be substituted, namely:—

"(c) the agreement, if any, which the company proposes to enter into with any individual for appointment as its managing or whole-time director or manager.";

(b) in sub-section (2),—

(i) for the words "a chartered accountant practising in India", the words "a secretary, or a chartered accountant, in whole-time practice in India" shall be substituted;

(ii) the words "managing agent, secretaries and treasures" shall be omitted;

(iii) the following *Explanation* shall be added at the end, namely:—

*'Explanation.*— For the purposes of this sub-section, "chartered accountant in whole-time practice in India" means a chartered accountant within the meaning of clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who is practising in India and who is not in fulltime employment.'

7. *Amendment of section 43A.* — In section 43A of the principle Act,—

(a) in sub-section (1), the following *Explanation* shall be added at the end, namely:—

*'Explanation.*— For the purposes of this sub-section, "bodies corporate" means public companies, or private companies which had become public companies by virtue of this section.';

(b) in sub-section (1A), for the words "less than rupees one crore", the words "less than such amount as may be prescribed" shall be substituted;

(c) after sub-section (1B), the following sub-section shall be inserted, namely:—

"(1C) Where, after the commencement of the Companies (amendment) Act, 1988, a private company accepts, after an invitation is made by an advertisement, or renews, deposits from the public, other than its members, directors or their relatives, such private company shall, on and from the date on which such acceptance or renewal, as the case may be, is first made after such commencement, become a public company and thereupon all the provisions of this section shall apply thereto:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be, reduced below seven.";

(d) sub-sections (6) and (7) shall be omitted;

(e) in sub-section (8),—

(i) in clause (a), the word "or" at the end shall be omitted;

(ii) clause (b) shall be omitted;

(iii) in clause (c), for the words "rupees one crore or more", the words, brackets, figure and letter "such amount as is referred to in sub-section (1A) or more" shall be substituted;

(iv) after clause (c), the following clause shall be inserted, namely:—

"(d) that the private company did not accept or renew deposits from the public.";

(f) after sub-section (9) and before the *Explanation*, the following sub-section shall be inserted, namely:—

"(10) Subject to the other provisions of this Act, any reference in this section to accepting, after an invitation is made by an advertisement, or renewing deposits from the public shall be construed as including a reference to accepting, after an invitation is made by an advertisement, or renewing deposits from any section of the public and the provisions of section 67 shall, so far as may be, apply, as if the reference to invitation to the public to subscribe for shares or debentures occurring in that section, includes a reference to invitation from the public for acceptance of deposits.";

(g) in the *Explanation*, after clause (b), the following clause shall be inserted, namely:—

'(c) "deposit" has the same meaning as in section 58A.'

8. *Amendment of section 56.*— In section 56 of the principal Act, in sub-section (3),—

(a) in the opening paragraph, for the words "by a prospectus", the words "by a memorandum containing such salient features of a prospectus as may be prescribed" shall be substituted;

(b) in the proviso, for the words "Provided that", the following shall be substituted, namely:—

"Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:

Provided further that".

9. *Amendment of section 58A.*— In section 58A of the principal Act,—

(a) in sub-section (3), in clause (a), for the words "terms of such deposit", the words "terms and conditions of such deposit" shall be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) Every deposit accepted by a company after the commencement of the Companies (Amendment) Act, 1988, shall, unless renewed in accordance with the rules made under sub-section (1), be repaid in accordance with the terms and conditions of such deposit.";

(c) after sub-section (8) and before the *Explanation*, the following sub-sections shall be inserted, namely:—

"(9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do safeguard the interests of the company, the depositors or in the public interest, direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company and the other persons interested in the matter.

(10) Whoever fails to comply with any order made by the Company Law Board under sub-section (9) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues."

10. *Amendment of section 73.*— In section 73 of the principal Act,—

(a) sub-section (1) shall be renumbered as sub-section (1A) thereof, and before sub-section (1A) as so renumbered, the following sub-section shall be inserted, namely:—

"(1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognized stock exchanges for permission for the shares or debentures intending to be so offered to be

dealt with in the stock exchange or each such stock exchange.”;

(b) in sub-section (1A), as so renumbered,—

(i) for the words “application has been, or will be,” the words, brackets and figure “application under sub-section (1) has been” shall be substituted;

(ii) the words “if the permission has not been applied for before the tenth day after the first issue of the prospectus, or, where such permission has been applied for before that day,” shall be omitted;

(c) in sub-section (2),—

(i) for the words “applied for as aforesaid”, the words, brackets and figure “applied under sub-section (1)” shall be substituted;

(ii) for the portion beginning with the words “the directors of the company” and ending with the words “the expiry of the eighth day:”, the following shall be substituted, namely:—

“the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent. and not more than fifteen per cent., as may be prescribed having regard to the length of the period of delay in making the repayment of such money.”;

(iii) the proviso shall be omitted;

(d) in sub-section (2A),—

(i) for the portion beginning with the words “the directors of the company” and ending with the words “the expiry of the eighth day:”, the following shall be substituted, namely:—

“the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen

per cent., as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.”;

(ii) the proviso shall be omitted.

11. *Amendment of section 74.*— In section 74 of the principal Act,—

(a) for the words “the eighth day, or the tenth day”, the words “or the eighth day” shall be substituted;

(b) for the words “eighth, or tenth day”, the words “or eighth day” shall be substituted.

12. *Substitution of new heading for heading above section 80.* — For the heading above section 80, the heading “Issue and Redemption of Preference Shares” shall be substituted.

13. *Amendment of section 80.*— In section 80 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:—

“(5A) Notwithstanding anything contained in this Act, no company limited by shares shall, after the commencement of the Companies (Amendment) Act, 1988, issue any preference share which is irredeemable or is redeemable after the expiry of a period of ten years from the date of its issue.”.

14. *Insertion of new section 80A.*— After section 80 of the principal Act, and before the heading “Further Issue of Capital”, the following section shall be inserted, namely:—

“80A. *Redemption of irredeemable preference shares, etc.*— (1) Notwithstanding anything contained in the terms of issue of any preference shares, every preference share issued before the commencement of the Companies (Amendment) Act, 1988,—

(a) which is irredeemable, shall be redeemed by the company within a period not exceeding five years from such commencement, or

(b) which is not redeemable before the expiry of ten years from the date of issue thereon in accordance with the terms of its issue and which had not been redeemed

before such commencement, shall be redeemed by the company on the date on which such share is due for redemption or within a period not exceeding ten years from such commencement, whichever is earlier:

Provided that where a company is not in a position to redeem any such share within the period aforesaid and to pay the dividend, if any, due thereon (such shares being hereinafter referred to as unredeemed preference shares), it may, with the consent of the Company Law Board, on a petition made by it in this behalf and notwithstanding anything contained in this Act, issue further redeemable preference shares equal to the amounts due (including the dividend thereon), in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed shares shall be deemed to have been redeemed.

(2) Nothing contained in section 106 or any schemes referred to in sections 391 to 395, or any scheme made under section 396, shall be deemed to confer power on any class of shareholders by resolution or on any court or the Central Government to vary or modify the provisions of this section.

(3) If any default is made in complying with the provisions of this section,—

(a) the company making such default shall be punishable with fine which may extend to one thousand rupees for every day during which such default continues; and

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine."

15. *Amendment of section 108.*— In section 108 of the principal Act, in sub-clause (i) of clause (b) of sub-section (1A), for the words "two months", the words "twelve months" shall be substituted.

16. *Substitution of new section for section 111.*— For section 111 of the principal Act, the following section shall be substituted, namely:—

"111. *Power to refuse registration and appeal against refusal.*— (1) If a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Company Law Board against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in sub-section (1), either to register the transfer or transmission or to send notice of its refusal to register the same.

(3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company.

(4) If—

(a) the name of any person—

(i) is, without sufficient cause, entered in the register of members of a company, or

(ii) after having been entered in the register, is, without sufficient cause, omitted therefrom; or

(b) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member [including a refusal under sub-section (1)],

the person aggrieved, or any member of the company, or the company, may apply to the

Company Law Board for rectification of the register.

(5) The Company Law Board, while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after hearing the parties, either dismiss the appeal or reject the application, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) The Company Law Board, while acting under sub-section (5), may, at its discretion, make—

(a) such interim orders, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or right shares.

(7) On any application under this section, the Company Law Board—

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register;

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(8) The provisions of sub-sections (4) to (7) shall apply in relation to the rectification of the register of debenture-holders as they apply in relation to the rectification of the register of members.

(9) If default is made in giving effect to the orders of the Company Law Board under this

section, the company and every officer of the company who is in default shall be punishable with fine which may extend to one thousand rupees, and with a further fine which may extend to one hundred rupees for every day after the first day after which the default continues.

(10) Every appeal or application to the Company Law Board under sub-section (2) or sub-section (4) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.

(11) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of the company is transmitted by a sale thereof held by court or other public authority, the provisions of sub-sections (4) to (7) shall apply as if the company were a public company:

Provided that the Company Law Board may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefor or such other sum as the Company Law Board may determine to be a reasonable compensation for the right in all the circumstances of the case.

(12) If default is made in complying with any of the provisions of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(13) Nothing in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company."

17. *Amendment of section 113.*— In section 113 of the principal Act,—

(a) in sub-section (1), for the opening portion, the following shall be substituted, namely:—

"Every company, unless prohibited by any provision of law or of any order of any court, tribunal or other authority, shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in section 53, the certificate of all shares, debentures and certificates of debenture stocks allotted or transferred:

Provided that the Company Law Board may, on an application being made to it in this behalf by the company, extend any of the periods within which the certificates of all debentures and debenture stocks allotted or transferred shall be delivered under this sub-section, to a further period not exceeding nine months, if it is satisfied that it is not possible for the company to deliver such certificates within the said periods."

(b) in sub-section (3), for the word "Court", the words "Company Law Board" shall be substituted.

18. *Amendment of section 125.*— In section 125 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

"Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X as the Registrar may determine, if the company satisfied the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period."

19. *Amendment of section 130.*— In section 130 of the principal Act,—

(a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

"(1) The Registrar shall, in respect of each company, cause to be kept a register containing the particulars of all the charges requiring registration under this Part.

(1A) Every company shall forward to the Registrar for being entered in the register kept under sub-section (1) the particulars of all the charges requiring registration under this Part in such form and manner, and after payment of, such fees as may be prescribed.

(1B) The particulars of the charges referred to in sub-section (1) shall relate to,—

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in sections 128 and 129;

(b) in the case of any other charge,—

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;

(ii) the amount secured by the charge;

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(1C) The pages of the register shall be consecutively numbered and the Registrar shall—

(a) cause to be kept in such register in the prescribed form, the documents of charges filed in such form and manner as may be prescribed; and

(b) sign or initial every page of such register.

(2) After entering the particulars of all the charges required under sub-section (1), the Registrar shall return the instrument, if any, or the verified copy thereof, as the case may be, filed in accordance with the provisions of this Part to the person filing it."

(b) in sub-section (3), for the words "a fee of one rupee", the words "such fee as may be prescribed" shall be substituted.



20. *Amendment of section 149.*— In section 149 of the principal Act, in sub-sections (1), (2) and (2A), for the words "one of the directors or the secretary", the words "one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice" shall be substituted.

21. *Omission of sections 155 and 156.*— Sections 155 and 156 of the principal Act shall be omitted.

22. *Amendment of Section 159.*— In sub-section (1) of section 159 of the principal Act, in the proviso, for the words "any of the two", the words "any of the five" shall be substituted.

23. *Amendment of section 161.*— In section 161 of the principal Act,—

(a) in sub-section (1),—

(i) the words "managing agent, secretaries and treasures," shall be omitted;

(ii) the following proviso shall be inserted, namely:—

"Provided that where the annual return is filed by a company whose shares are listed on a recognized stock exchange, the copy of such annual return shall also be signed by a secretary in whole-time practice.";

(b) in sub-section (2), for the words "both the signatories", the words "the signatories" shall be substituted.

24. *Amendment of section 179.*— In section 179 of the principal Act, in sub-section (1), for clauses (a) to (d), the following clauses shall be substituted, namely:—

"(a) in the case of a public company having a share capital, by any member or members present in person or by proxy and holding shares in the company—

(i) which confer a power to vote on the resolution not being less than one tenth of the total voting power in respect of the resolution, or

(ii) on which an aggregate sum of not less than fifty thousand rupees has been paid up,

(b) in the case of a private company having a share capital, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members presents in person or by proxy, if more than seven such members are personally present,

(c) in the case of any other company, by any member or members present in person or by proxy and having not less than one tenth of the total voting power in respect of the resolution."

25. *Amendment of section 198.*— In section 198 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) Notwithstanding anything contained in sub-sections (1) to (3) but subject to the provisions of section 269, read with Schedule XIII, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum [exclusive of any fees payable to directors under sub-section (2) of section 309], except with the previous approval of the Central Government."

26. *Amendment of section 205.*— In section 205 of the principal Act,—

(a) in sub-section (2), in clause (d), for the words and figures "the Indian Income-tax Act, 1922 or the rules made thereunder", the words "this Act or any rules made thereunder" shall be substituted; 11 of 1922.

(b) after sub-section (2A), the following sub-section shall be inserted, namely:—

"(2B) A company which fails to comply with the provisions of section 80A shall not, so long as such failure continues, declare any dividend on its equity shares."

27. *Amendment of section 205A.*— In section 205A of the principal Act, in sub-section (1),—

(a) for the words "or the warrant in respect thereof has not been posted", the words "or claimed" shall be substituted,

(b) for the words "or in relation to which no dividend warrant has been posted", the words "or unclaimed" shall be substituted;

(c) the following *Explanation* shall be inserted at the end, namely:—

*Explanation.*— In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

28. *Insertion of new section 206A.*— After section 206 of the principal Act, the following section shall be inserted, namely:—

"206A. *Right to dividend rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.*— Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,—

(a) transfer the dividend in relation to such shares to the special account referred to in section 205A unless the company is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(b) keep in abeyance in relation to such shares any offer of rights shares under clause (a) of sub-section (1) of section 81 and any issue of fully paid-up bonus shares in pursuance of sub-section (3) of section 205."

29. *Amendment of section 209.*— In section 209 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) For the purposes of sub-sections (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein,—

(a) in there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or branch

office, as the case may be, and to explain its transactions; and

(b) if such books are not kept on accrual basis and according to the double entry system of accounting."

30. *Amendment of section 217.*— In section 217 of the principal Act,—

(a) in sub-section (1), after clause (d), the following clause shall be added, namely:—

"(e) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.";

(b) in sub-section (2A), in clause (a),—

(1) in sub-clause (i), for the words "thirty-six thousand rupees", the words "such sum as may be prescribed" shall be substituted;

(2) in sub-clause (ii), for the words "three thousand rupees per month", the words "such sum per month as may be prescribed; or shall be substituted;

(3) after sub-clause (ii), the following sub-clause shall be inserted, namely:—

"(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two per cent., of the equity shares of the company."

31. *Amendment of section 219.*— In section 219 of the principal Act,—

(a) in sub-section (1),—

(i) in the opening paragraph, for the portion beginning with the words "to every holder of debentures" and ending with the words "being persons so entitled", the following shall be substituted, namely:—

"to every trustee for the holders of any debentures issued by the company,

whether such member or trustee is or is not entitled to have notices of general meetings of the company sent to him, and to all persons other than such members or trustees, being persons so entitled";

(ii) in the proviso, in clause (b),—

(1) the word "or" occurring at the end of sub-clause (ii) shall be omitted;

(2) the word "and" occurring at the end of sub-clause (iii) shall be omitted;

(3) after sub-clause (iii), the following sub-clause shall be inserted, namely:—

"(iv) in the case of a company whose shares are listed on a recognised stock exchange, if the copies of the documents aforesaid are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents aforesaid, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting;"

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Any member or holder of debentures of a company and any person from whom the company has accepted a sum of money by way of deposit shall, on demand, be entitled to be furnished free of cost, with a copy of the last balance sheet of the company and of every document required by law to be annexed or attached thereto, including the profit and loss account and the auditors' report.";

(c) in sub-section (4), for the word "Court", the words "Company Law Board" shall be substituted.

32. *Amendment of section 220.* — In section 220 of the principal Act, in sub-section (2), after the words "does not adopt the balance sheet," the words "or is adjourned without adopting the balance sheet," shall be inserted.

33. *Amendment of section 224.*— In sub-section (1B) of section 224 of the principal Act,—

(a) in the opening paragraph, after the words "re-appoint any person", the words "who is in full-time employment elsewhere" shall be inserted;

(b) for the first proviso, the following proviso shall be substituted, namely:—

'Provided that in the case of a firm of auditors, "specified number of companies" shall be construed as the number of companies specified for every partner of the firm who is not in full-time employment elsewhere;'.

34. *Amendment of section 224A.*— In sub-section (2) of section 224A of the principal Act, in clause (b) of the *Explanation*, the words, brackets and figures "or in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980" shall be added at the end.

35. *Amendment of section 233B.* — In section 233B of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The auditor under this section shall be appointed by the Board of directors of the company in accordance with the provisions of sub-section (1B) of section 224 and with the previous approval of the Central Government:

Provided that before the appointment of any auditor is made by the Board, a written certificate shall be obtained by the Board from the auditor proposed to be so appointed to the effect that the appointment, if made, will be in accordance with the provisions of sub-section (1B) of section 224."

36. *Substitution of new section for section 235.*— For section 235 of the principal Act, the following section shall be substituted, namely:—

"235. *Investigation of the affairs of a company.*— (1) The Central Government may, where a report has been made by the Registrar under sub-section (6) of section 234, or under sub-section (7) of that section, read with sub-section (6) thereof, appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct.

(2) Where—

(a) in the case of a company having a share capital, an application has been received from not less than two hundred members or form members holding not less than one-tenth of the total voting power therein, and

(b) in the case of a company having no share capital, as application has been received from not less than one-fifth of the persons on the company's register of members,

the Company Law Board may, after giving the parties an opportunity of being heard, by order, declare that the affairs of the company ought to be investigated by an inspector or inspectors, and on such a declaration being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as the Central Government may direct."

37. *Amendment of section 236.*— In section 236 of the principal Act,—

(a) for the words, brackets, letters and figures "under clause (a) or (b) of section 235", the words, brackets and figures "under sub-section (2) of section 235" shall be substituted;

(b) for the words "Central Government may require", the words "Company Law Board may require" shall be substituted.

38. *Amendment of section 237.*— In section 237 of the principal Act, on clause (b),—

(a) for the words "Central Government", the words "Company Law Board" shall be substituted;

(b) in sub-clause (iii), the words "the managing agent, the secretaries and treasurers," shall be omitted.

39. *Amendment of section 241.*— In sub-section (2) of section 241 of the principal Act,—

(i) in clause (c), for the words, brackets and letters "under clause (a) or (b)", the words, brackets and figure "in pursuance of the provisions of sub-section (2)" shall be substituted;

(ii) in clause (d), the word "and" at the end shall be omitted;

(iii) after clause (d), the following clause shall be inserted, namely:—

"(dd) shall, where the inspectors are appointed in pursuance of the provisions of sub-section (2) of section 235, furnish a copy of the report to the Company Law Board; and".

40. *Amendment of section 245.*— In sub-section (1) of section 245 of the principal Act, in sub-clause (ii) of clause (c), for the words, brackets and letters "under clause (a) or clause (b)", the words, brackets and figure "in pursuance of the provisions of sub-section (2)" shall be substituted.

41. *Amendment of section 247.*— In section 247 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Without prejudice to its powers under this section, the Central Government shall appoint one or more inspectors under sub-section (1), if the Company Law Board, in the course of any proceedings before it, declares by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purpose of determining the true persons—

(a) who are or have been financially interested in the success of failure, whether real or apparent, of the company; or

(b) who are or have been able to control or materially to influence the policy of the company."

42. *Amendment of section 248.*— In sub-section (1) of section 248 of the principal Act,—

(a) for the words "Where it appears to the Central Government", the words "Where it appears to the Central Government, or to the Company Law Board in any proceedings before it," shall be substituted;

(b) for the words "the Central Government may require", the words "the Central Government or the Company Law Board, as the case may be, may require" shall be substituted;

(c) for the words "to give the Central Government", the words "to give the Central Government or the Company law Board, as the case may be," shall be substituted.

43. *Amendment of section 250.*— In section 250 of the principal Act,—

(a) in sub-section (1),—

(i) for the words and figures "Where it appears to the Central Government, whether in connection with any investigation under section 247, 248 or 249 or otherwise", the words and figures "Where it appears to the Company Law Board, whether on a reference made to it by the Central Government in connection with any investigation under section 247, 248 or 249 or on a complaint made by any person in this behalf" shall be substituted;

(ii) for the words "Central Government", at both the places where they occur, the words "Company Law Board" shall be substituted;

(b) for sub-sections (3) and (4), the following sub-sections shall be substituted, namely:—

"(3) Where a transfer of shares in a company has taken place and as a result thereof a change in the composition of the Board of directors of the company is likely to take place and the Company Law Board is of the opinion that any such change would be prejudicial to the public interest, it may, by order, direct that—

(a) the voting rights in respect of those shares shall not be exercisable for such period not exceeding three years as may be specified in the order;

(b) no resolution passed or action taken to effect a change in the composition of the Board of directors before the date of the order shall have effect unless confirmed by the Company Law Board.

(4) Where the Company Law Board has reasonable ground to believe that a transfer of shares in a company is likely to take place whereby a change in the composition of the Board of directors of the company is likely to take place and the Company Law Board is of the opinion that any such change would be prejudicial to the public interest, the Company Law Board may, by order, direct that any transfer of shares in the company during such period not exceeding three years as may be specified in the order, shall be void.";

(c) in sub-section (5), for the words "Central Government", the words "Company Law Board" shall be substituted;

(d) sub-sections (6) and (7) shall be omitted;

(e) in sub-section (8), for the words "Central Government", the words "Company Law Board" shall be substituted.

44. *Amendment of section 251.* — In section 251 of the principal Act, for the words "the Registrar or to the Central Government or to an inspector appointed by that Government", the words "Company Law Board or to the Central Government or to the Registrar or to an inspector appointed by Central Government" shall be substituted.

45. *Amendment of section 257.*— In sub-section (1) of section 257 of the principal Act, the following shall be added at the end, namely:—

"along with a deposit of five hundred rupees which shall be refunded to such person or, as the case may be, to such member, if the person succeeds in getting elected as a director."

46. *Substitution of new section for section 269.*— For section 269 of the principal Act, the following section shall be substituted, namely:—

'269. *Appointment of managing or whole time director or manager to require Government approval only in certain cases.*—

(1) On and from the commencement of the Companies (Amendment) Act, 1988, every public company, or a private company which is a subsidiary of a public company, having a paid up share capital of such sum as may be prescribed, shall have a managing or whole-time director or a manager.

(2) On and from the commencement of the Companies (Amendment) Act, 1988, no appointment of a person as a managing or whole-time director or a manager in a public company or a private company which is a subsidiary of a public company shall be made except with the approval of the Central Government unless such appointment is made in accordance with the conditions specified in Parts I and II of Schedule XIII (the said Parts being subject to the provisions of Part III of that Schedule) and a return in the prescribed form is filed within ninety days from the date of such appointment.

(3) Every application seeking approval to the appointment of a managing or whole-time director or a manager shall be made to the Central Government within a period of ninety days from the date of such appointment.

(4) The Central Government shall not accord its approval to an application made under sub-section (3), if it is satisfied that—

(a) the managing or whole-time director or the manager appointed is, in its opinion, not a fit and proper person to be appointed as such or such appointment is not in the public interest; or

(b) the terms and conditions of the appointment of managing or whole-time director or the manager are not fair and reasonable.

(5) It shall be competent for the Central Government while according approval to an appointment under sub-section (3) to accord approval for a period lesser than the period for which the appointment is proposed to be made.

(6) If the appointment of a person as a managing or whole time director or a manager is not approved by the Central

Government under sub-section (4), the person so appointed shall vacate his office as such managing or whole-time director or manager on the date on which the decision of the Central Government is communicated to the company, and if he omits or fails to do so, he shall be punishable with fine which may extend to five hundred rupees for every day during which he omits or fails to vacate such office.

(7) Where the Central Government *suo motu* or on any information received by it is, *prima facie*, of the opinion that any appointment made under sub-section (2) without the approval of the Central Government has been made in contravention of the requirements of Schedule XIII, it shall be competent for the Central Government to refer the matter to the Company Law Board for decision.

(8) The Company Law Board shall, on receipt of a reference under sub-section (7), issue a notice to the company, the managing or whole-time director or the manager, as the case may be, and the director or other officer responsible for complying with the requirements of Schedule XIII, to show cause as to why such appointment shall not be terminated and the penalties provided under sub-section (10) shall not be imposed.

(9) The Company Law Board shall, if, after giving a reasonable opportunity to the company, the managing or whole-time director or the manager, or the officer who is in default, as the case may be, comes to the conclusion that the appointment has been made in contravention of the requirements of Schedule XIII, make an order declaring that a contravention of the requirements of Schedule XIII has taken place.

(10) On the making of an order by the Company Law Board under sub-section (9),—

(a) the company shall be liable to a fine which may extend to five thousand rupees;

(b) every officer of the company who is in default shall be liable to a fine of ten thousand rupees; and

(c) the appointment of the managing or whole-time director or manager, as the case may be, shall be deemed to have come to an end and the person so appointed shall, in addition to being liable to pay a fine of ten thousand rupees, refund to the company the entire amount of salaries, commissions and perquisites received or enjoyed by him between the date of his appointment and the passing of such order.

(11) If a company contravenes the provisions of sub-section (10) or any direction given by the Company Law Board under that sub-section every officer of the company who is in default and the managing or whole-time director or the manager, as the case may be, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to fifty rupees for every day of default.

(12) All acts done by a managing or whole-time director or a manager, as the case may be, purporting to act in such capacity and whose appointment has been found to be in contravention of Schedule XIII, shall, if the acts so done are valid otherwise, be valid notwithstanding any order made by the Company Law Board under sub-section (9).

**Explanation.**— In this section "appointment" includes reappointment and "whole-time director" includes a director in the whole-time employment of the company.

47. *Amendment of section 310.*— In section 310 of the principal Act,—

(a) in the opening paragraph, for the portion beginning with the words "shall not have any effect" and ending with the words "approved by the Central Government", the following shall be substituted, namely:—

"shall not have any effect—

(a) in cases where Schedule XIII is applicable, unless such increase is in accordance with the conditions specified in that schedule; and

(b) in any other case, unless it is approved by the Central Government.";

(b) in the proviso, for the words "two hundred and fifty rupees", the words "such sum as may be prescribed" shall be substituted;

(c) after the proviso as so amended, the following proviso shall be inserted, namely:—

"Provided further that where in the case of any private company which converts itself into a public company or becomes a public company under the provisions of section 43A, any provision relating to the remuneration of any director including a managing or whole-time directors as contained in its memorandum or articles or in any agreement entered into by it or in any resolution passed by it in general meeting or by its Board of directors includes a provision for the payment of fee for each meeting of the Board or a Committee thereof attended by any such director which is in excess of the sum specified under the first proviso, such provision shall be deemed to be an increase in the remuneration of such director and shall not, after it ceases to be a private company, or, as the case may be, becomes a public company have any effect unless approved by the Central Government."

48. *Amendment of section 311.*— In section 311 of the principal Act, for the portion beginning with the words "shall not have any effect" and ending with the words "approved by the Central Government", the following shall be substituted, namely:—

"shall not have any effect—

(a) in cases where Schedule XIII is applicable, unless such increase is in accordance with the conditions specified in that Schedule; and

(b) in any other case, unless it is approved by the Central Government".

49. *Amendment of section 314.*— In section 314 of the principal Act,—

(a) in sub-section (1), in clause (b), for the words "five hundred rupees or more", the words "such sum as may be prescribed" shall be substituted;

(b) in sub-section (1B),—

(i) for the words "three thousand rupees", the words "such sum as may be prescribed" shall be substituted;

(ii) the proviso shall be omitted;

(c) in sub-section (2D), the words, brackets, figure and letter "or (2C), as the case may be," shall be omitted.

50. *Amendment of section 350.*— In section 350 of the principal Act, for the portion beginning with the words "at the rate specified for the assets" and ending with the words "or those rules or otherwise", the words and figures "at the rate specified in Schedule XIV" shall be substituted.

51. *Amendment of section 370.* — In section 370 of the principal Act,—

(a) in sub-section (1),—

(i) in the first proviso, for the words "ten per cent. of the aggregate of the subscribed capital of the lending company and its free reserves", the words "such percentage of the aggregate of the subscribed capital of the lending company and its free reserves as may be prescribed" shall be substituted;

(ii) in the second proviso,—

(1) in clause (a), for the words "thirty per cent. of the aggregate of the subscribed capital of the lending company and its free reserves", the words "such percentage of the aggregate of the subscribed capital of the lending company and its free reserves as may be prescribed" shall be substituted;

(2) in clause (b), for the words "twenty per cent. of the aggregate of the subscribed capital of the lending company and its free reserves", the words "such percentage of the aggregate of the subscribed capital of the lending company and its free reserves as may be prescribed" shall be substituted;

(iii) in *Explanation 1*, for the words, brackets and letters "thirty per cent. of the aggregate specified in clause (a), or, as the case may be, of twenty per cent. of the aggregate specified in clause (b), of the second proviso", the words, brackets and letters "the percentage of the aggregate specified in clause (a), or, as the case may be, the percentage of the aggregate specified in clause (b) of the second proviso" shall be substituted;

(b) the following *Explanation* shall be added at the end, namely:—

*'Explanation.*— For the purposes of this section, "loan" includes any deposit of money made by one company with another company, not being a banking company.'

52. *Amendment of section 372.*— In section 372 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) A company, whether by itself or together with its subsidiaries (hereafter in this section and section 373 referred to as the investing company), shall not be entitled to acquire, by way of subscription, purchase or otherwise (whether by itself, or by any individual or association of individuals in trust for it or for its benefit or on its account) the shares of any other body corporate except to the extent, and except in accordance with the restrictions and conditions, specified in this section.";

(b) in sub-section (2),—

(i) for the opening paragraph, the following shall be substituted, namely:—

"The Board of directors of the investing company shall be entitled to invest in any shares of any other body corporate up to such percentage of the subscribed equity share capital, or the aggregate of the paid-up equity and preference share capital, of such other body corporate, whichever is less, as may be prescribed:";

(ii) in the first proviso, for the words "thirty per cent. of the subscribed capital of the investing company" the words "such percentage of the aggregate of the subscribed capital and free reserves of the investing company, as may be prescribed" shall be substituted;

(iii) in the second proviso, for the words "twenty per cent. of the subscribed capital of the investing company", the words "such percentage of the aggregate of the subscribed capital and free reserves of the investing company as may be prescribed" shall be substituted;

(c) in sub-section (4), for the words "unless further it is approved", the words "unless previously approved" shall be substituted;



(d) in sub-section (14), for clause (d), the following clause shall be substituted, namely:—

"(d) to investments by a holding company in its subsidiary, other than a subsidiary within the meaning of clause (a) of sub-section (1) of section 4;"

53. *Amendment of section 383A.* — In section 383A of the principal Act,—

(a) in sub section (1), for the words "having a paid-up capital of rupees twenty-five lakhs or more", the words "having such paid-up share capital as may be prescribed" shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) If a company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues:

Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary."

54. *Amendment of section 408.*— In section 408 of the principal Act,—

(a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

"(1) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the Company Law Board may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interests to hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the Company Law Board, on a reference made to it by the Central Government or on

an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest:

Provided that in lieu of passing an order as aforesaid, the Company Law Board may, if the company has not availed itself of the option given to it under section 265, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the Company Law Board.

(2) In case the Company Law Board passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, such number of persons as the Company Law Board may, by order, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest, shall hold office as additional directors of the company and on such directions, the Central Government shall appoint such additional directors."

(b) in sub-section (5), for the words "Central Government", the words "Company Law Board" shall be substituted;

(c) in sub-section (6), the following shall be added at the end, namely:—

"and such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company, and upon such directions being given, the appointment, removal or alteration, as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have

been complied with without requiring any further act or thing to be done".

55. *Amendment of section 462.* — In section 462 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

"(4A) Where an account referred to in sub-section (4) relates to a Government company in liquidation, the liquidator shall forward a copy thereof,—

(a) to the Central Government, if that Government is a member of the Government company; or

(b) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company."

56. *Amendment of section 551.*— In section 551 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Where a statement referred to in sub-section (2) relates to a Government company in liquidation, the liquidator shall forward a copy thereof,—

(a) to the Central Government, if that Government is a member of the Government company; or

(b) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company."

57. *Amendment of section 610.*— In section 610 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (a), for the words "a fee of one rupee", the words "such fee as may be prescribed" shall be substituted;

(ii) in clause (b), for the words beginning with "a fee of five rupees" and ending with the words "copy of extract", the words "such fees as may be prescribed" shall be substituted;

(b) in sub-section (2), after the word "Court", wherever it occurs, the words "or the Company Law Board" shall be inserted.

58. *Amendment of section 619A.* — In section 619A of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) The provisions of this section shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company."

59. *Insertion of new section 621A.*— After section 621 of the principal Act, the following section shall be inserted, namely:—

'621A. *Composition of certain offences.*— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by—

(a) the Company Law Board; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five thousand rupees, by the Regional Director,

on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that Board or the Regional Director, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of

additional fee under sub-section (2) of section 611 shall be taken into account.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

*Explanation.*— For the purposes of this section,—

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) "Regional Director" means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

(3) Every Regional Director shall exercise the powers to compound an offence, subject to the direction, control and supervision, of the Company Law Board.

(4) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Company Law Board or the Regional Director, as the case may be.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence

being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(5) The Company Law Board or the Regional Director, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may, direct, by order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 611, such return, account or other document within such time as may be specified in the order.

(6) Any officer or other employee of the company who fails to comply with any order made by the Company Law Board or the Regional Director under sub-section (5) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding five thousand rupees, or with both.

(7) Notwithstanding anything contained in the Code of Criminal 2 of 1974. Procedure, 1973,—

(a) any offence which is punishable under this Act with imprisonment or with fine, or with both, shall be compoundable with the permission of the Court, in accordance with the procedure laid down in that Act for compounding of offences;

(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(8) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.

60. *Amendment of section 634A.*— In section 634A of the principal Act, the words and figures "under section 17, section 18, section 19, section 79, section 141 or section 186" shall be omitted.

61. *Amendment of section 635.*— In sub-section (4) of section 635 of the principal Act, the words and figures "under section 17, section 18, section 19, section 79, or section 186" shall be omitted.

62. *Amendment of section 637.*— In section 637 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Central Government may, by notification in the Official Gazette, and subject to such conditions, restrictions and limitations as may be specified therein, delegate any of its powers or functions under this Act (other than the power to appoint a person as public trustee under section 153A and the power to make rules), to such authority or officer as may be specified in the notification.";

(b) in sub-section (2),—

(i) the words, brackets and letter "clause (b) of" shall be omitted;

(ii) the figures "409" shall be omitted;

(c) sub-section (2A) shall be omitted.

63. *Amendment of section 637A.*— In section 637A of the principal Act, in sub-section (2), the words "not exceeding one hundred rupees" shall be omitted.

64. *Amendment of section 640A.*— In section 640A of the principal Act, and in the heading before that section, for the word "Court", the words "Court or the Company Law Board" shall be substituted.

65. *Amendment of section 640B.*— In section 640B of the principal Act, in sub-section (1), for the figures and word "346, 352, 408 or 409", the figures and word "346 or 352" shall be substituted.

66. *Insertion of new Schedules XIII and XIV.*— After Schedule XII of the principal Act, the following Schedules shall be inserted, namely:—

### 'SCHEDULE XIII

(See sections 198, 269, 310 and 311)

#### CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE- -TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT

##### PART I

##### Appointments

1. No person shall be eligible for appointment as a managing or whole-time director or a manager of a company unless he satisfies the following conditions, namely:—

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—

(i) The Indian Stamp Act, 1899 (2 of 1899),

(ii) The Central Excises and Salt Act, 1944 (1 of 1944),

(iii) The Imports and Exports (Control) Act, 1947 (18 of 1947),

(iv) The Industries (Development and Regulation) Act, 1951 (65 of 1951),

(v) The Prevention of Food Adulteration Act, 1954 (37 of 1954),

(vi) The Essential Commodities Act, 1955 (10 of 1955),

(vii) The Companies Act, 1956 (1 of 1956),

(viii) The Wealth-tax Act, 1957 (27 of 1957),

(ix) The Income-tax Act, 1961 (43 of 1961),

(x) The Customs Act, 1962 (52 of 1962),

(xi) The Gold (Control) Act, 1968 (45 of 1968),

(xii) The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969),

(xiii) The Foreign Exchange Regulation Act, 1973 (46 of 1973);

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974: 52 of 1974.

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval:

(c) he has completed the age of thirty years and has not attained the age of sixty-five years or the age of retirement if any, specified by the company, whichever is earlier;

(d) he is not a managing or whole-time director or manager in any other company or a managing partner of a firm, or is not in whole-time employment anywhere;

(e) he is a citizen of India and is resident in India;

(f) if the company had suffered loss or had inadequate profits during the financial year immediately preceding the financial year in which the appointment is made (hereinafter referred to as the preceding financial year) or in any of the three financial years in the four financial years immediately preceding the preceding financial year.

## PART II

### Remuneration

2. *Remuneration.*— Subject to the ceiling limits laid down in section 198 and section 309, remuneration by way of salary, commission or both and perquisites shall not exceed the following limits, namely:—

*Salary:*— Rupees 1,80,000/- per annum or rupees 15,000/- per month including dearness and all other allowances calculated in the following scale:—

where the effective capital of the Company is—	monthly salary payable shall not exceed—
(i) less than 20 lakhs rupees	rupees 6,000/-
(ii) rupees 20 lakhs or more but less than rupees 50 lakhs	rupees 7,500/-
(iii) rupees 50 lakhs or more but less than rupees 1 crore	rupees 9,000/-
(iv) rupees 1 crore or more but less than rupees 3 crores	rupees 11,000/-
(v) rupees 3 crores or more but less than rupees 5 crores	rupees 13,000/-
(vi) rupees 5 crores or more	rupees 15,000/-

*Explanation.*— For the purposes of this Part, "effective capital" means the aggregate of the paid-up share capital amount, if any, for the time being standing to the credit of share premium account, reserves and surplus, long-term loans and deposits received, if any, as reduced by the aggregate of any investments, accumulated losses and preliminary expenses, not written off.

### Commission:—

(i) In case commission is also payable along with the salary, it shall not be more than one per cent. of the net profits of the company, subject to a ceiling of fifty per cent. of the salary or Rs. 90,000/- per annum, whichever is less.

(ii) Where it is proposed to pay remuneration by way of commission only, such commission shall not exceed the following limits, namely:—

where the effective capital of the company is—	Commission payable annually shall not exceed—
(a) less than 20 lakhs rupees	rupees 1,08,000/-
(b) rupees 20 lakhs or more but less than rupees 50 lakhs	rupees 1,35,000/-
(c) rupees 50 lakhs or more but less than rupees 1 crore	rupees 1,62,000/-
(d) rupees 1 crore or more but less than rupees 3 crores	rupees 1,98,000/-
(e) rupees 3 crores or more but less than rupees 5 crores	rupees 2,34,000/-
(f) rupees 5 crores or more	rupees 2,70,000/-

**Perquisites:—**

Perquisites may be allowed in addition to salary and/or commission or both. In the case of persons posted at Bombay, Calcutta, Delhi and Madras, perquisites shall be restricted to an amount equal to the annual salary or Rs. 1,35,000/- per annum, whichever is less. In the case of persons posted at other places, perquisites shall be restricted to an amount equal to the annual salary or Rs. 1,15,000/- per annum, whichever is less. Unless the context otherwise requires, perquisites are classified into three categories 'A', 'B' and 'C' as follows:

**Category—A**

This will comprise house rent allowance, leave travel concession, medical reimbursement, fees on clubs and personal accident insurance. These may be provided for as under:—

(i) *Housing I.*— The expenditure by companies on hiring unfurnished accommodation for the appointee will be subject to the following ceilings:—

**(a) Bombay, Calcutta, Delhi and Madras:**

Sixty per cent. of the salary, over and above ten per cent. payable by the appointee.

**(b) other places:**

Fifty per cent. of the salary, over and above ten per cent. payable by the appointee.

*Housing II.*— In case the accommodation is owned by the company, ten per cent. of the salary of the appointee shall be deducted by the company.

*Housing III.* — In case no accommodation is provided by the company, the appointee shall be entitled to house rent allowance subject to the ceilings laid down in *Housing I.*

*Explanation.*— The expenditure incurred by companies on gas, electricity, water and furnishings shall be valued as per the Income-tax Rules, 1962. This shall, however, be subject to a ceiling of ten per cent. of the salary of the person proposed to be appointed.

(ii) *Medical reimbursement*— Expenses incurred for the person to be appointed and the family subject to a ceiling of one month's salary in a year or three months' salary over a period of three years.

(iii) *Leave Travel Concession*— For the person proposed to be appointed and his family, once in a year incurred in accordance with any rules specified by the company.

(iv) *Club fees*— Fees of clubs subject to a maximum of two clubs. This will not include admission and life membership fees.

(v) *Personal Accident Insurance*— Premium not to exceed Rs. 1,000/- per annum.

*Explanation.*— For the purposes of Category-A, "family" means the spouse, the dependant children and dependant parents of the appointee.

**Category—B**

Contribution to provident fund, superannuation fund or annuity fund will not be included in the computation of the ceiling on perquisites to the extent these either singly or put together are not taxable under the Income-tax Act. Gratuity payable should not exceed half a month's salary for each completed year of service, subject to a ceiling of rupees 1,00,000.

**Category—C**

Provision of car for use on company's business and telephone at residence will not be considered as perquisites. Personal long distance calls on telephone and use of car for private purpose shall be billed by the company to the individual appointee concerned.

**Part III****Provisions applicable to Parts I and II of this Schedule**

1. The appointment and remuneration referred to in Parts I and II of this Schedule shall be subject to approval by a resolution of the share holders in general meeting.

2. The resolution referred to in paragraph (1) shall, in the event of loss or inadequacy of profits, provide for a cut of ten per cent. of the salary proposed to be paid under Part II of this Schedule.

3. The auditor or the secretary of the company or where the company has not appointed a secretary, a secretary in whole-time practice shall certify that the requirements of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (2) of section 269.

## SCHEDULE XIV

(See sections 205 and 350)

## Rates of depreciation

Nature of assets	Single Shift		Double Shift		Triple Shift	
	W.D.V.	S.L.M.	W.D.V.	S.L.M.	W.D.V.	S.L.M.
1	2	3	4	5	6	7
I. (a) Buildings (other than factory buildings) NESD ... ..	5 per cent.	1.63 per cent.	...	...	...	...
(b) Factory Buildings ... ..	10 per cent.	3.34 per cent.	...	...	...	...
(c) Purely temporary erections such as wooden structures ... ..	100 per cent.	100 per cent.	...	...	...	...
II. Plant and Machinery						
(i) General rate applicable to plant and machinery (not being a ship) for which no special rate has been prescribed under (ii) below	15 per cent.	5.15 per cent.	22.5 per cent.	8.09 per cent.	30 per cent.	11.31 per cent.
(ii) Special rates						
A. 1 Cinematograph films—Machinery used in the production and exhibition of cinematograph films [N.E.S.D.]—						
(a) Recording equipment, reproducing equipment, developing machines, printing machines, editing machines, synchronisers and studio lights except bulbs						
(b) Projecting equipment of film exhibiting concerns						
2 Cycles [N.E.S.D.]	20 per cent.	7.07 per cent.	...	...	...	...
3 Electrical machinery—Batteries; X-Ray and electro-therapeutic apparatus and accessories thereto [N.E.S.D.]						
4 Juice boiling pans (karhais) [N.E.S.D.]						
5 Motor-cars, motor cycles, scooters and other mopeds [N.E.S.D.]						
6 Electrically operated vehicles including battery powered or fuel cell powered vehicles [N.E.S.D.]						

1	2	3	4	5	6	7
7 Sugarcane crushers (indigenous kolhus and belans) [N.E.S.D.]						
8 Glass manufacturing concerns except direct fire glass melting furnaces— Recuperative and regenerative glass melting furnaces...	20 per cent.	7.07 per cent.	30 per cent.	11.31 per cent.	40 per cent.	16.21 per cent.
9 Machinery used in the manufacture of electronic goods or components						
<b>B</b>						
1 Aeroplanes—Aircraft, aerial photographic apparatus [N.E.S.D.]						
2 Concrete pipes manufacture— Moulds [N.E.S.D.]						
3 Drum container manufacture— Dies [N.E.S.D.]						
4 Earth-moving machinery employed in heavy construction works, such as dams, tunnels, canals, etc. [N.E.S.D.]						
5 Glass manufacturing concerns except direct fire glass melting furnaces— Moulds —[N.E.S.D.]						
6 Moulds in iron foundaries [N.E.S.D.]						
7 Mineral oil concerns— Field operations (above ground)— Portable boilers, drilling tools, well-head tanks, rigs, etc. [N.E.S.D.]	30 per cent.	11.31 per cent.	...	...	...	...
8 Mines and quarries— Portable underground machinery and earth-moving machinery used in open cast mining [N.E.S.D.]						
9 Motor buses and motor lorries other than those used in a business of running them on hire [N.E.S.D.]						
9A Motor tractors, harvesting combines [N.E.S.D.]						
10 Patterns, dies and templates [N.E.S.D.]						
11 Ropeway structures— Ropeways, ropes and trestle sheaves and connected parts [N.E.S.D.]						
12 Shoe and other leather goods factories—Wooden lasts used in the manufacture of shoes.	30 per cent.	11.31 per cent.	45 per cent.	18.96 per cent.	60 per cent.	29.05 per cent.



1	2	3	4	5	6	7
<b>C</b>						
1 Aeroplanes— Aero-engines [N.E.S.D.]						
2 Motor buses, motor lorries and motor taxis used in a business of running them on hire [N.E.S.D.]						
3 Rubber and plastic goods factories — Moulds [N.E.S.D.]	40 per cent.	16.21 per cent	...	...	...	...
4 Data processing machines including computers [N.E.S.D.]						
5 Gas cylinders including valves and regulators [N.E.S.D.]						
<b>D</b>						
1 Artificial silk manufacturing machinery wooden parts						
2 Cinematograph films— Bulbs of studio lights						
3 Floor mills— Rollers						
4 Glass manufacturing concerns— Direct fire glass melting furnaces						
5 Iron and Steel industries— Rolling mill rolls						
6 Match factories— Wooden match frames						
7 Mineral oil concerns— (a) Plant used in field operations (below ground)— Distribution-returnable packages (b) Plant used in field operations (below ground) but not including assets used in field operations (distribution)— Kerbside pumps including underground tanks and fittings	100 per cent.	100 per cent.	...	...	...	...
8 Mines and quarries—						
(a) Tubs, winding ropes, haulage ropes and sand stowing pipes						
(b) Safety lamps						
9 Salt works— Salt pans, reservoirs and condensers, etc., made of earthy, sandy or clay material or any other similar material						
10 Sugar works— Rollers						

1	2	3	4	5	6	7
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## III. FURNITURE AND FITTINGS—

1 General rates NESD	...	10.	3.34	...	...	...	...
		per cent.	per cent.				
2 Rate for furniture and fittings used in hotels, restaurants and boarding houses; schools, colleges and other educational institutions, libraries; welfare centres; meeting halls, cinema houses; theatres and circuses; and for furniture and fittings let out on hire for use on the occasion of marriages and similar functions NESD		15	5.15	...	...	...	..
		per cent.	per cent.				

## IV SHIPS—

## I Ocean-going ships—

(i) Fishing vessels with wooden hull NESD	27.05	10	...	...	...	...
	per cent.	per cent.				
(ii) Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes NESD	19.8	7	...	...	...	...
	per cent.	per cent.				
(iii) Other ships NESD	14.6	5	...	...	...	...
	per cent.	per cent.				

## 2. Vessels ordinarily operating on inland waters—

(i) Speed boats NESD	20	7.07	...	...	...	...
	per cent.	per cent.				
(ii) Other vessels NESD	10	3.34	...	...	...	...
	per cent.	per cent.				

W. D. V. : means Written Down Value.

S. L. M. : means Straight Line Method.

## NOTES

1. "buildings" include roads, bridges, culverts, wells and tube-wells.
  2. "factory buildings" does not include offices, godowns, officers' and employees' quarters, roads, bridges, culverts, wells and tube-wells.
  3. "speed boat" means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometres per hour in still water and so designed that when running at a speed it will plane, i.e., its bow will rise from the water.
  4. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a *pro rata* basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.
  5. The following information should also be disclosed in the accounts:
    - (i) depreciation methods used; and
    - (ii) depreciation rates or the useful lives of the assets, if they are different from the principal rates specified in the Schedule.
  6. The calculations of the extra depreciation for double shift working and for triple shift working shall be made separately in the proportion which the number of days for which the concern worked double shift or triple shift, as the case may be, bears to the normal number of working days during the year. For this purpose, the normal number of working days during the year shall be deemed to be—
    - (a) in the case of a seasonal factory or concern, the number of days on which the factory or concern actually worked during the year or 180 days, whichever is greater;
    - (b) in any other case, the number of days on which the factory or concern actually worked during the year or 240 days, whichever is greater.
- The extra shift depreciation shall not be charged in respect of any item of machinery or plant which has been specifically, excepted by inscription of the letters "N.E.S.D." (meaning "No Extra Shift Depreciation") against it in sub-items above and also in respect of the following items of machinery and plant to which the general rate of depreciation of 15 per cent. applies—
- (1) Accounting machines.
  - (2) Air-conditioning machinery including room air-conditioners.
  - (3) Building contractor's machinery.
  - (4) Calculating machines.
  - (5) Electrical machinery—switchgear and instruments, transformers and other stationary plant and wiring and fitting of electric light and fan installations.
  - (6) Hydraulic works, pipelines and sluices.
  - (7) Locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns.
  - (8) Mineral oil concerns—field operations:
    - (a) Boilers.
    - (b) Prime movers.
    - (c) Process plant.

- (d) Storage tanks (above ground).
  - (e) Pipelines (above ground).
  - (f) Jetties and dry docks.
- (9) Mineral oil concerns—field operations (distribution)—kerbside pumps including underground tanks and fittings.
- (10) Mineral oil concerns—refineries:
- (a) Boilers.
  - (b) Prime movers.
  - (c) Process plant.
- (11) Mines and quarries:
- (a) Surface and underground machinery (other than electrical machinery and portable underground machinery).
  - (b) Head-gears.
  - (c) Rails.
  - (d) Boilers.
  - (e) Shafts and inclines.
  - (f) Tramways on the surface.
- (12) Neo-post franking machines.
- (13) Office machinery.
- (14) Overhead cables and wires.
- (15) Railway sidings.
- (16) Refrigeration plant, containers, etc. (other than racks).
- (17) Ropeway structures:
- (a) Trestle and station steel work.
  - (b) Driving and tension gearing.
- (18) Salt works—Reservoirs, condensers, salt pans, delivery channels and piers if constructed of masonry, concrete, cement, asphalt or similar materials; barges and floating plant; piers, quays and jetties; and pipelines for conveying brine if constructed of masonry, concrete, cement, asphalt or similar materials.
- (19) Surgical instruments.
- (20) Tramways electric and tramways run by internal combustion engines—permanent way: cars—car trucks, car bodies, electrical equipment and motors; tram cars including engines and gears.
- (21) Typewriters.

(22) Weighing machines.

(23) Wireless apparatus and gear, wireless appliances and accessories.

67. *Consequential amendments.*— The provisions of the principal Act specified in column 2 of the Table below shall stand amended in the manner specified in the corresponding entries in column 3 of the said Table.

TABLES

Serial Number	Provision	Amendment
1	2	3
1	Section 43	In the proviso, for the word "Court" at both the places where it occurs, the words "Company Law Board" shall be substituted.
2.	Section 49	In sub-section (10), for the word "Court", the words "Company Law Board" shall be substituted.
3.	Section 118	(a) In sub-section (1),—  (i) in clause (a), for the words "the sum of one rupee", the words "such sum as may be prescribed" shall be substituted;  (ii) in clause (b), for the words "six annas", the words "such sum as may be prescribed" shall be substituted;  (b) in sub-section (3), for the word "Court", the words "Company Law Board" shall be substituted.
4	Section 144	(a) in sub-section (2), for the words "one rupee", the words "such sum as may be prescribed" shall be substituted;  (b) in sub-section (4), for the word "Court", the words "Company Law Board" shall be substituted.
5.	Section 163	(a) In sub-section (2), in clause (b), for the words "a fee of one rupee", the words "such sum as may be prescribed" shall be substituted;  (b) In sub-section (3), in clause (b), for the words "six annas", the words "such sum as may be prescribed" shall be substituted;  (c) in sub-section (6), for the word "Court", the words "Company Law Board" shall be substituted.
6.	Section 167	For the words "Central Government", wherever they occur, the words "Company Law Board" shall be substituted.
7.	Section 188	In sub-section (5), for the word "Court" at both the places where it occurs, the words "Company Law Board" shall be substituted.
8.	Section 196	(a) In sub-section (2), for the words "six annas", the words "such sum as may be prescribed" shall be substituted;  (b) in sub-section (4), for the word "Court", the words "Company Law Board" shall be substituted.
9.	Section 225	In the proviso to sub-section (3), for the word "Court" at both the places where it occurs, the words "Company Law Board" shall be substituted.

1	2	3
10.	Section 284	In the proviso to sub-section (4), for the word "Court" at both the places where it occurs, the words "Company Law Board" shall be substituted.
11	Section 304	In clause (b) of sub-section (2), for the word "Court", the words "Company Law Board" shall be substituted.
12	Section 307	In sub-section (9), for the word "Court", the words "Company Law Board" shall be substituted.
13	Chapter IVA of of Part VI.	For the words "High Court" wherever they occur, the words "Company Law Board" shall be substituted.
14	Chapter VI of Part VI.	In the sub-heading "A. Powers of Court" and in sections 397 to 405, for the word "Court" wherever it occurs, the words "Company Law Board" shall be substituted.
15	Section 407	(a) In sub-section (I),— (i) in the opening paragraph, the words "of a Court" shall be omitted;  (ii) in clause (b), for the word "Court", the words "Company Law Board" shall be substituted;  (b) in sub-section (3), for the words "No Court shall grant leave", the words "No leave shall be granted" shall be substituted.
16	Section 409	For the words "Central Government" wherever they occur, the words "Company Law Board" shall be substituted.
17	Section 614	In sub-section (I), for the word "Court", the words "Company Law Board" shall be substituted.
18	Schedule XI	For the word "Court" wherever it occurs, the words "Company Law Board" shall be substituted.

68. *Transitional provisions.*— (1) Any matter or proceeding which, immediately before the commencement of the Companies (Amendment) Act, 1988, was pending before any Court shall, notwithstanding that such matter or proceeding would be heard by the Company Law Board after such commencement, be continued and disposed of by that Court after such commencement in accordance with the provisions of the principal Act as they stood immediately before such commencement.

(2) Any matter or proceeding which, immediately before the commencement of the Companies (Amendment) Act, 1988, was pending before the Company Law Board by virtue of any notification issued by the Central Government shall, unless such matter or proceeding would be heard by the Company Law Board after such commencement, be heard and disposed of by the Central Government.